

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1039 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GANDHI P KUBERDAS

Versus

DY COLLECTOR

Appearance:

MR MANGESH R MENGDEY for Petitioner

MS MANISHA LAVKUMAR for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/07/2000

ORAL JUDGEMENT

1. Having heard the learned counsel for the parties,
I am satisfied that the order of the Deputy Secretary,
Food and Civil Supplies Department, State of Gujarat,
dated 2nd February, 1991, annexure 'G' cannot be allowed
to stand.

2. It is accepted by the authority aforesaid that at the time of inspection, the petitioner produced the bills. It is also not in dispute that the lot of wheat has not been shown. On inspection at the shop, four irregularities were noticed. First is that during the inquiry, there is big difference in the available stock. Second, the bills are not prepared on the same day. Third is that on the date of inquiry 100 kilos of Tuvvar and 100 kilos of Udad are purchased. The purchase bill is not prepared. Fourth is that the wheat lot is kept unregistered. From the judgment of the authority aforesaid, I find that in none of these irregularities it has found any merits which clearly goes to show that ultimately the penalty was given only of forfeiture of 25% of costs of seized goods. It is also not in dispute that the Government has freed wheat. No black-marketing complaint is there. The purchaser of wheat as well as Tuvvar, Udad is shown in the stock register. The authority has considered the punishment given as completely disproportionate to the wrong. Nothing has been found against the petitioner except what the authority stated that, "in spite of this there is proof of wrong doing or mala fide intention". The authority has failed to give out what are the proof of wrong doing or mala fide intention. This is nothing but an order where the authority has given penalty only for the sake of penalty. This is a perverse order which cannot be allowed to stand.

3. In the result, this special civil application succeeds and the same is allowed and the order of the Deputy Secretary, Food & Civil Supplies Department, State of Gujarat dated 2-2-1991 annexure 'G' is quashed and set aside and it is hereby ordered that not a single pie from the costs of seized goods is to be forfeited. In pursuance of the orders of the authorities below if any amount is forfeited, the same may be returned back to the petitioner forthwith. Rule is made absolute accordingly. However, in the facts of this case, no order as to costs.

zgs/-